

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

TOTAL REBUILD, INC.)	
)	
Plaintiff/Counterclaim-Defendant,)	Case No. 6:15-cv-01855-TAD-CBW
)	
v.)	JUDGE TERRY A. DOUGHTY
)	
PHC FLUID POWER, L.L.C.,)	MAGISTRATE JUDGE WHITEHURST
)	
Defendant/Counterclaim-Plaintiff.)	JURY TRIAL DEMANDED
)	

**DEFENDANT PHC FLUID POWER, L.L.C.'S RESPONSE IN OPPOSITION TO
PLAINTIFF TOTAL REBUILD, INC.'S MOTION FOR EXTENSION OF TIME TO
FILE OPPOSITION TO DEFENDANT'S MOTION IN LIMINE REGARDING
ACCUSED SYSTEMS NOT IDENTIFIED IN INFRINGEMENT CONTENTIONS**

Defendant/Counterclaimant PHC Fluid Power, LLC (“Defendant”) opposes Plaintiff Total Rebuild, Inc.’s request for yet another extension to respond to Defendant’s Motion in Limine regarding Accused Systems Not Identified in Infringement Contentions. The requested extension would make it impossible for Defendant and its counsel to prepare for the jury trial.

The extension pertains to more than simply an allegedly last-minute temporary illness by one of the four attorneys of record for Plaintiff in this case. The requested extension pertains to a motion to exclude information that was required to be provided in **August 2016** – over three years ago. *See* Motion in Limine (Dkt. 296). The required information was to identify specifically what systems are alleged to infringe the patent in suit. Yet, less than two week before the parties exhibit list, witness lists, jury instructions, verdict forms, and other filing are due, Plaintiff seeks another extension because it simply cannot and will not identify the systems for which the parties are going to trial. Without the identification of the systems at issue, it is impossible for Defendant and its

counsel to properly prepare for trial and provide all the exhibits and documents within the deadlines set by the Court.

If Total is permitted to assert infringement at trial by numerous systems with different configurations, PHC will have to prepare witnesses, exhibits, and testimony for numerous systems within those broad categories of systems, whether Total will argue infringement by any specific system or not. Two and a half weeks for PHC to prepare for an unknown number of accused systems is simply insufficient. Further, PHC needs a decision on the Motion in Limine so it can continue with other pre-trial matters if the Motion in Limine is granted.

This is yet another action by a Plaintiff who, from day one, has not been prepared to take this case to trial. This trial has been reset multiple times. Plaintiff suspects this is simply another delay tactic. Certainly, one of three other attorneys for Plaintiff (two of which are named partners at the firm) could pick up the slack for an attorney who was just added to the record last week.

Accordingly, PHC respectfully requests Total's Motion for Extension be denied.

Dated: August 26, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of August 2019, a copy of the foregoing was served on counsel of record listed below via the Court's ECF system:

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